

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
OCTOBER 14, 2009**

**CALL TO
ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Gordon Cross, Frank DeKort, Marc Pitman, Jeff Larsen, Randy Toavs and Jim Heim. Marie Hickey-AuClaire and Mike Mower had excused absences. Alex Hogle, Andrew Hagemeyer, Allison Mouch and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were approximately 31 people in the audience.

**APPROVAL OF
MINUTES**

DeKort made a motion seconded by Pitman to approve the September 9, 2009 meeting minutes.

The motion passed by quorum.

**PUBLIC
COMMENT
(not related to
agenda items)**

None.

**TEXT
AMENDMENT
(FZTA 09-02)**

A request by Gary Krueger for a Zoning Text Amendment to Chapter 7 (Definitions) of the Flathead County Zoning Regulations. The proposal would add a definition in Section 7.08 for 'Gravel Extraction', to include post extraction processing activities, as follows:

Gravel Extraction - The following activities, if they are conducted for the primary purpose of sale or utilization of materials:

- 1) Removing the overburden and mining directly from the exposed natural deposits or mining directly from natural deposits of materials;
- 2) Mine site preparation, including access;
- 3) Processing of materials within the area that is to be mined or contiguous to the area that is to be mined or the access road;
- 4) Processing materials within the area that is to be mined through crushing, screening, asphalt, wash and concrete plants, and utilizing other equipment used in processing opencut materials;
- 5) Transportation of materials on areas referred to in

- subsections 1 through 3;
- 6) Storing or stockpiling of materials on areas referred to in subsections 1 through 3;
- 7) Reclamation of affected land; and
- 8) Any other associated surface or subsurface activity conducted on areas referred to in subsections 1 through 3.

STAFF REPORT Alex Hogle reviewed Staff Report FZTA 09-02 for the Board.

BOARD QUESTIONS Larsen read resolution 955 GM and asked staff to explain the last part regarding zoning designations R-1 to SAG-10.

Hogle gave his interpretation.

Larsen asked how the resolution applied to the West Valley area.

Hogle explained the West Valley Zoning District and the West Valley Neighborhood Plan area had been identified as being residential. He gave some history of how it came to be considered residential and stated it was complex and complicated.

Larsen said it doesn't specifically include the West Valley Zoning area but rather R-1 through SAG-10.

Hogle commented that it doesn't specifically talk about the West Valley Zoning District but does have specific bearing on all areas zoned as residential. The court rulings call it out as residential. He referenced a 2008 court ruling, Tutvedt vs. Board of Adjustment.

Larsen stated he thought the statute said the commissioners had to determine what was residential. He was confused as to why the resolution talked about specific zoning districts and didn't mention West Valley. other than the court cases he wondered how West Valley got into the mix.

Hogle said it was a good point and if it happened to be the crux that must specifically be called out by the commissioners as residential it should definitely be looked at.

Larsen referenced a letter from the county attorney's office and stated he felt the board was setting themselves up for problems not reviewing items under Montana Code Annotated. (MCA) It

would be real easy to consider the new statutory criteria as they are quite similar to the old ones. He felt the board should follow state law and also consider what was in the Zoning Regulations. He thought having new state law and then reviewing something under current regulations was a problem. They were seeing two applications that had been reviewed under criteria that didn't exist under state law and he felt they were setting themselves up.

Lapp asked if there were plans to change the criteria.

Grieve stated it would go before the commissioners the first part of November, it had already come before the planning board.

Cross stated they had the hearing and approved it but it was in the resolution process.

Hogle commented the county attorney's office had actual case evidence regarding another county in the state that had not followed their established regulations but instead followed something that was based on state and they were sued for not following their own regulations and lost. Generally the policy of the county is to update applicable regulations after there are changes in statute. He appreciated the point and said it was within the boards' ability to look at the two functional changes. They are very similar and the board may want to look at them and come up with a finding relative to those changes.

APPLICANT PRESENTATION

Gary Krueger, 805 Church Drive, stated Flathead County does not have a definition for gravel extraction in the zoning regulations and that fact has been used to stop, delay or modify conditional use applications in the West Valley Zoning District. It was not because the proposed project could not be reasonably mitigated; not because the proposed gravel pit impacted local residents; the projects were stopped and delayed because we don't know what gravel extraction is. State laws gave counties the right to reasonably condition or prohibit open-cut mining operations or concrete and asphalt batch plants in residential zones. The county has a Board of Adjustment (BOA) duly charged with hearing and mitigating through conditions or prohibiting gravel extraction proposals. The BOA should not be asked to define gravel extraction; it is not within their authority. The proper format for defining gravel extraction is through a text change and his application starts that process. He spoke about a few items brought up by staff this evening and about the open-cut mining act and what that allows. He handed out a packet of

information to the board and said this particular packet was information he pulled from county records, state law, and the Supreme Court case the board heard reference to. He commented that Supreme Court case was very specific to one gravel pit operation was reviewing an application that was done under some old law (1-04-020 MCA). That particular law was where neighborhood plans were given some authority with regard to zoning. That ruling, Flathead County zoning, has been repealed. It was also done before 76-2-209 MCA stated "as defined by the Board of County Commissioners". Prior to that it stated "in residential zones". There was some confusion regarding who defines a residential zone. At that time it was charged to the BOA but that statute has changed and it is now the Board of County Commissioners. He wasn't trying to deny West Valley was a residential zone; he wasn't saying gravel extraction and extractive industries were not synonymous; he wasn't trying to change any of those facts; he was trying to find a definition for gravel extraction. He went through his packet of information for the board and stated he was not asking for new industrial with asphalt and concrete plants, they already exist in the West Valley Neighborhood Plan (WVNP). They existed at the time the WVNP was adopted and he believed they were protected under that portion of the WVNP. He also believed the way to protect existing uses was under the Open-cut Mining Act they were permitted under and under the definitions of the Open-Cut Mining Act they were operating under. He felt that would be conforming to the WVNP, West Valley zoning and Flathead County Regulations. He believed that should be all that was needed to say this definition already exists. He felt the staff report was contrary to the things he presented and he wanted to rebut all of the findings-of-fact that were presented by staff. He handed out another packet of information to the board and went through each of the findings with his comments and alternate findings for FZTA 09-02. (See Attached) He asked the board to look at the WVNP that states there are existing operations. It says to allow gravel extraction. It states, on the implementation page, that property rights should be protected to the end of protecting those existing industrial uses that were out there operating under the Open-cut Mining Act and are operating to this day under the same permits. Those permits allow specifically what it stated in Attachment One, which he didn't write but was just trying to defend it. He believed it would be a good start for Flathead County to use state code as their definition so we don't have confusion between Flathead County Planning & Zoning and the Department of Environmental Quality

(DEQ). He requested that if an applicant is required to provide the same information required by DEQ, the county should be obligated to use the same terms as them. He respectfully asked the board to adopt his report as the 'Petitioners rebuttal to the Staff Report' and recommend the definition as he presented it.

**BOARD
QUESTIONS**

Cross commented that gravel extraction only appears in the WVNP. He wanted to know, in Krueger's opinion, if there were a definition for gravel extraction, how would that change the status quo in West Valley.

Krueger said he thought they would see very little change. You might see an application come in for an asphalt or concrete batch plant to be associated with a gravel pit, and as a member of the BOA one should really be looking at the mitigation plan for those plans. He would not be comfortable approving an application that did not have a mitigation plan. He believed you had to have mitigation plans. They realize in the industry they have to be more forward with residents and provide mitigation of the impacts to the best of their ability.

Heim asked if this was the first opportunity he had to express himself to staff.

Krueger said yes it was. He asked a week ago if he could send his rebuttal to staff and the board members and was told he had to present it at the meeting like everybody else.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Paul McKenzie, was there on behalf of Stoltze Land & Lumber Company. He stated he was a current member of the West Valley Land Use Advisory Committee, since 2005, and was in favor of a definition. He felt it would provide a level of certainty for the landowners in West Valley. He had heard a lot of compelling arguments for both sides of the issue over the years; and in his opinion, given the latitude of the BOA and the county commissioners, they value the details and individual impacts for each specific project. He was in favor of adopting a broader definition of gravel extraction, similar to what Mr. Krueger has proposed. West Valley Zoning District is 40,000 acres in size, ranging from highly residential areas to highly agricultural areas. It also has a highly variable topography in land use mix out there. Under the authority of 76-2-209 MCA, he thought uses

could be reasonably conditioned or prohibited, and that was really up to the design of the project as well as the location. The BOA has the latitude to mitigate impacts on a case by case basis. He urged the board to forward some kind of recommendation for a definition of gravel extraction. Yes, it does only apply to West Valley, but is a fairly important issue out there.

Ginny Coyle, 120 Marvins Way, was opposed to the request. The staff report appropriately evaluated the request and recommended denial. She objected to the possible increase of dangerous air pollutants in the valley as faulty emissions contain harmful particulate matter and gaseous, volatile organic compounds. A text amendment to the current regulations could multiply these impacts if more pits were allowed. She felt the amendment would not promote general health and welfare for the public or residents in the West Valley Zoning District. Weakening this text now can lead to more areas being affected down the road. If a new definition is approved the only thing promoted would be the gravel pit community. Please deny this request.

Mark Schwager, 2226 West Valley Drive, had also been a West Valley Land Use Advisory Committee member since 2005. This text amendment isn't about West Valley; it's a county-wide text amendment. He referenced resolution 955 GU that talks about the purpose of applying zoning regulations to gravel operations that they can be conditioned or prohibited in residential zones. He also referenced Section 3.03 (10) of the Flathead County Zoning Regulations (FCZR), that talk about zones that are residential and says that gravel extraction and asphalt and concrete batch plants can be conditioned or prohibited except in AG-40 or AG-80 zones. If you put the definition that Mr. Krueger proposes in the text, the BOA will not be able to condition or prohibit batch and asphalt plants in AG-40 or AG-80 whether it's in West Valley or anywhere else in the valley. With the bypass project on the horizon, there will be batch and asphalt plants all up and down Highway 93. He asked the board to deny this text amendment as it would have significant ramifications to lives and property values of everybody in the county that lives near an AG-40 or AG-80 zone.

Sharon DeMeester, 415 Chestnut Drive, asked if the text amendment would apply to the entire county. She spoke of the gravel pit in West Glacier being just across the river from Glacier Park and stated there could be a batch plant or an asphalt plant

right next to Glacier Park. It needs to be given serious thought.

Bruce Tutvedt, 2335 West Valley Drive, commented that the board could see why the BOA requested Krueger get a definition for this. He went forward with a plan for a concrete plant in the middle of his farm. That farm actually has fewer people surrounding it today than it did in the 1930's. This is probably one of the most rural areas in Flathead County. His application was denied because there was no definition. He is now following the procedure to get a definition. He spoke about the original WVNP and said that gravel extraction was never meant to be lessened or mitigated and there was no talk about lowering the size or the scale. Gravel pits were very instrumental in the plan. He referenced several gravel pits that existed out there including the Silverstone Pit, by Art and Dorothy Hanson, which was permitted seven months after the plan was adopted, showing the intent of the plan. He spoke about House Bill 486, stating it referenced in the Growth Policy that you find and protect your gravel resources. In the tradition of gravel pits, they always follow the resource as it's the most efficient way to process gravel. Some of these pits are in the most rural areas of the county. If you don't allow it in the great agriculture farm areas of West Valley, where are you going to allow it? We need the safety and the infrastructure and we need affordable building materials to build, going forward so we can build homes for the new families and jobs for here. They go together. Without asphalt and concrete you can't have the basic building blocks for affordability. You have to have a reasonable definition as a large landowner or you won't get any landowner that has more than five acres to join neighborhood plans. What's going to protect the landowner if the board doesn't have a definition? He hoped the board would move forward and he felt Mr. Krueger laid out very articulate reasons why the staff report was misleading. He felt the process was flawed and hoped it could be changed.

Mayre Flowers, Citizens for a Better Flathead, spoke in support of the staff report and the recommendation for denial. She pointed out a few findings she felt needed to be revisited or changed. This is more than an administrative change and there needs to be consistency in the staff report. There are serious impacts by adding asphalt and concrete batch plants. Finding-of-Fact #4 needs to list some of the more serious dangers that need to be considered. Finding-of-Fact #5, discussions were limited to West Valley and she felt that since this is a text amendment that would change, if adopted, how gravel extraction

is defined, it would apply beyond West Valley. It's important in the findings and the reports the board adopts reflect not only the impacts to West Valley but look at other areas as well. Finding-of-Fact #6 needs to state there would definitely be higher traffic and would bring impacts of overcrowding of the land. Finding-of-Fact #8 is the first reference to administrative as well as implementation. She was concerned about the repeated reference to it being just an administrative act. Finding-of-Fact #9 she felt the board needed to include a finding on the impacts to water quality. Finding-of-Fact #10, this amendment would significantly impact the suitability of where these are located throughout the valley and because this is valley wide, she asked the board to consider adopting a finding that it does have the potential, when implemented, to significantly impact the suitability of the area where it is located. Finding-of-Fact #11 states it is just West Valley and since it is not it should be clarified. Finding-of-Fact #12 needed to be clarified that it would not encourage the most appropriate use not only in West Valley but outside of that area. In conclusion, she encouraged the board to revise Finding-of-Facts #4, #5, #6, #8, #9, #10, #11, and #12. She urged the board to support the staff report and deny the recommendation.

Lisa Hochmann, 5600 Highway 93 South in Somers, agreed with Mayre Flowers.

**APPLICANT
REBUTTAL**

Krueger stated AG-40 and AG-80 have, as a conditional use, extractive industry. This definition has no bearing at all on that. It does not change the underlying zone. He reiterated the gravel pits that existed and were operating under the Open-cut Mining Act and again spoke of the protection of private property rights. He said regulations must offer protection of existing uses and recognize differences in land use opportunity for all planning jurisdictions. The existing uses were operating under the definition that is proposed. West Valley is an important gravel resource area. This really doesn't have an effect valley wide unless you are in a zone that uses extractive industries. There would be impacts in those districts.

**STAFF
REBUTTAL**

Hogle wanted to start by pointing out Mr. Krueger had provided substantial comment in his packet, with attachments. Mr. Krueger ended his presentation by indicating he was told by the Planning & Zoning Office he could not submit that material. On the contrary, on October 8th Hogle stated he had sent an email follow-up to a discussion Mr. Krueger had with the Planning

Director stating he was writing the email regarding the ability to provide comment to the planning board and the commission. Hogle read the email that read, "any written comment received by this office by 5:00 P.M., October 14, 2009, including comments from the applicant, interested agencies and general public will be provided to the planning board for their consideration at that evening's public hearing. In addition, the public may provide verbal comment and the applicant has the opportunity to provide an applicant presentation to the board during the public hearing. You are encouraged to provide comment on the proposal and the staff report to the planning board and commission". Hogle wanted to come forward in the interest of transparency that in no way was Mr. Krueger informed that he could not provide comment.

Cross clarified Mr. Krueger said if he provided the information it would not be sent out to the board members.

Hogle stated if he had provided the information it would have been in the boards' packets.

Grieve clarified the office policy and mailing procedure for board packets and submission of new information.

The board and staff discussed the mailing procedure for packets and staff reports to board members and the applicants.

Larsen said it seemed to him it would be a lot easier for the planning board, planning staff and the applicant, if there was a lot of information, they get it early. Then nobody is getting blindsided the night of the meeting. The burden falls on the applicant to make their case. The planning board has all these pages of information presented to them in one night and the applicant can't really answer it because they get the packet at the same time as the board members. It seemed to him there needs to be a better system for the board and staff to review materials, specifically new information presented at the meeting.

Grieve responded.

Hogle clarified some of the language stated in the applicants' comments. He wanted to point out some discrepancies in the applicants' proposed findings-of-fact. He read from the West Valley Neighborhood Plan and the Flathead County Zoning Regulations to support his response. He also referenced 76-6-

209 MCA saying the state recognized a distinction between gravel extraction and other potential related industries. He referenced section 82-4-431 of the Open-cut Mining Act saying that under the permit process it clearly stated you are dealing with mining, processing and reclamation as separate distinct elements that may be involved in gravel extraction. West Valley is the only district with gravel extraction. Perhaps it was a mistake but the truth of the matter is it does not say extractive industries it says gravel extraction. The intent of expanding the types of activities associated with gravel extraction is not supported by the WVNP because it has no bearing on normal agricultural functions. There is plenty of justification offered by Mr. Krueger regarding the ability for the conditional use permit process to provide the needed mitigation. He stated those impacts would be adequately addressed by the impact criteria. Hogle referenced 2.06.080 FCZR and asked the board to take a look at the criteria as a whole, used to review a conditional use permit, and realize the review really comes down to counting the number of criteria supported by a request and the number that are not. He spoke about mitigation of impacts and whether or not to deny or approve an application based on those. He talked about public comments stating interpretation by staff, regarding the limitations of gravel extraction in the WVNP area, in some of their reports has been a stretch. He didn't believe it was a stretch but the omission of discussion about industrial activities, that are not agriculturally related and those impacts associated with them, make it very clear the plan did not intend for expansion of non-agricultural industry in the plan area. He commented that the WVNP is 10+ years old and outdated and thought the solution was to revisit the plan and put some intelligent thought into the plan. This request today does not comply with the plan. Mr. Krueger's recommended findings consistently state that gravel extraction is a primary use. For the record, it is listed as a conditional use in the zoning regulations. Mr. Krueger sites state law and the definitions listed in the Open-cut Mining Act. He wanted to point out those definitions had been selectively chosen to suit his interests and support his project. The definitions themselves do not create the regulation. In reviewing this request, Hogle said he attempted to stay on topic. He did not feel it was appropriate to pick apart the merits of past decisions and not his place to bring up the Silverstone/Hanson CUP into this discussion. He spoke of the Hanson gravel pit giving some history of the conditional use permit. He again reiterated this was a good case for a revision to the WVNP and amend it where appropriate.

**MAIN MOTION
TO ADOPT
F.O.F.**

Pitman made a motion seconded by Toavs to adopt staff report FZTA 09-02 as findings-of-fact.

**BOARD
DISCUSSION**

Heim commented that Mr. Krueger's rebuttal was a huge challenge to the staff report and the whole thing should go through reconciliation. Denying it will not solve the problem or provide a definition.

Toavs agreed and said the rebuttal was good but the situation has a lot of personal issues on both sides. He suggested they adopt the applicants' rebuttal as part of the staff report.

**SECONDARY
MOTION TO
(Add Petitioners'
Rebuttal)**

Toavs made a motion seconded by Larsen to adopt Staff Report FZTA 09-02 'Rebuttal by Petitioner' with attachments 1-5 as additional findings-of-fact, not to replace staffs', but as additional ones.

**BOARD
DISCUSSION**

Toavs said there were a lot of really good points on both sides of the fence. He felt the commissioners needed to see the rebuttal along with the staff report. It would come down to weighing out both sides of this issue.

Lapp clarified this was just to attach the comments and nobody had to reconcile anything between now and the time it goes to the commissioners; they would receive both of the reports. He commented that if the rebuttal was attached to the report he would be willing to look at that.

**ROLL CALL
(Add Petitioners'
Rebuttal)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Cross asked staff about the notion of primary use; were they deleting 'primary use' with the text amendments that just went before the board. He wanted to know if 'primary use' was a more common term with the BOA.

Grieve clarified, stating there were performance standards for accessory uses, there were references to principle uses and accessory uses and there was one reference to primary which the text amendment would eventually delete if the amendment were approved, thereby making them all consistent.

Larsen asked Krueger what he was trying to get at by using the term primary use.

Krueger said the language came from the county attorney, Jonathon Smith. He crafted the language in response to the Supreme Court requiring the BOA to come up with a definition and justification.

Larsen commented this came from the court case.

Krueger said yes.

Larsen asked for clarification restating what Krueger said about it not having to be accessory.

Krueger said yes.

Pitman commented that it struck him as odd there would be an increase in traffic. They would still be hauling the same amount of material out of the pit whether it goes out as gravel, asphalt or concrete. He couldn't justify that finding.

Cross asked for clarification from staff.

Pitman wanted to see some numbers to support that.

Hogle said it would be difficult, but when you start to increase the types of facilities on that site and have extra demand in addition to vehicles coming to get the product there would be an increase in traffic associated with the simple production and transit of product.

Toavs reminded the board members of their meeting with the county commissioners in the past and their thoughts on the board adopting findings-of-fact.

DeKort said his problem was that there were two different findings of fact, and wondered which ones were the boards' findings-of-fact.

The board discussed, at length, the procedure for adopting findings of fact and amending the findings to support their recommendation.

There was discussion regarding the West Valley Land Use Advisory Committee and the fact the public comment period had been closed.

**SECONDARY
MOTION TO
(Postpone FZTA
09-02 until 11/4)**

Cross made a motion seconded by Pitman to postpone FZTA 09-02 until November 4, 2009.

**ROLL CALL
(Postpone FZTA
09-02 until 11/4)**

On a roll call vote the motion passed 6-1 with Lapp dissenting.

**GROWTH
POLICY
AMENDMENT
SOLOMON-
PEYTON
(FPMA 09-03)**

A request by Solomon/Peyton, LLC for a Growth Policy Amendment to the Land Use Map of the Two Rivers Neighborhood Plan. The applicant wishes to change the zoning designation from High Density to Commercial on 20 acres and from Commercial to Industrial on 20 acres impacting a total of 40 acres. The properties are located on the southwest corner of the intersection of Trumble Creek Road and Rose Crossing.

**ZONE CHANGE
SOLOMON-
PEYTON
(FZC-09-04)**

A Zone Change request in the Evergreen Zoning District by Solomon/Peyton, LLC. The proposal would change the zoning on 116 acres. The current zoning designation is AG-80 (Agricultural); the proposed zoning would change 20 acres to B-2 (General Business), 20 acres to I-1 (Light Industrial) and 76 acres to R-2 (One-Family Limited Residential). The properties are located on the southwest corner of the intersection of Trumble Creek Road and Rose Crossing.

STAFF REPORT

Andrew Hagemeyer reviewed Staff Report FPMA-09-03 and FZC 09-04 for the Board.

**BOARD
QUESTIONS**

Heim asked about the railroad in regards to transportation.

Hagemeyer said it was not an insignificant thing, in fact that's part of the reason they proposed industrial on a portion of the property.

Larsen asked about the Two Rivers Plan and wondered if R-2 was consistent with high residential.

Hagemeyer said yes it was. When looking at future land use designations in a neighborhood plan, planning staff considers 'up to' eight units per acre. Slowly, over time you can work your

way up to that density.

Cross asked about a comment from the city of Kalispell and asked about the subdivision application.

Hagemeier said the subdivision application was for a minor subdivision. They were proposing a five lot minor and pointed out on the map where the residential area would be located. There were not buffers shown on the preliminary plat and he will meet with the applicants after the amendment and the zone change are approved. It would be addressed in subdivision review.

Lapp asked about the environmental health comments.

Hagemeier said that would be looked at in subdivision review as well.

DeKort asked about the for sale sign on the property.

Hagemeier said he thought the applicant was solidifying the ability to do what the sign on the property stated.

Lapp asked about a road and whether the applicant would be responsible for it.

Hagemeier said there was a potential health and safety issue there. He didn't think it was a legal easement and could be trespassing. There are no stop signs or traffic safety devices; so encouraging traffic on there, which the subdivision would be doing, he didn't know what could be done and they would do their best to address that in subdivision.

Pitman commented they were looking at a proposed industrial designation and commercial on the Trumble Creek stretch which would be a lot better than residential. It seemed to him there could be a better opportunity to control traffic there because of that.

Lapp said he couldn't find his Two Rivers Plan, was it a county adopted plan.

Hagemeier said it was Resolution 822A and he had spent a lot of time tracking it down. Typically, the resolution that adopts a neighborhood plan is written and adopted by the county

commissioners, in the resolution it will 'attach' the plan in some way; as exhibit 'A' or attached hereto. Resolution 822A with attachments, a black and white map and a few Growth Policy statements, that is the plan.

**APPLICANT
PRESENTATION**

Erica Wirtala, Sands Surveying Inc., 2 Village Loop, represented the applicants. She gave a brief history of the property and the owners' vision for future development. She spoke about future uses for the property and said, at this time; sewer is not ready to accommodate large scale development on this property. Their initial visits with the city manager and city planning office were positive that with inter-local agreements with Evergreen Water & Sewer at this time could be expanded to include this property. However, the systems are an older one with smaller pipes and outdated lift stations and are not able to accommodate that larger proposed capacity. Those plans will have to be shelved for a while. In the interim, they would still like to do something with the property. She pointed out the commercial and industrial areas and spoke about keeping the remaining 118 acres at low density. She showed a preliminary plat that at this time would be incompatible with the master plan so it would have to wait for the process to move forward. The property is for sale but the owner has not made any false representation that something is pending or approved. This proposal is essentially taking the second step from what the Two Rivers Master Plan had originally set up in 2005 with a minor tweak to it. The way the R-2 zone reads is that public service, either water or sewer, must be available to the property as it stands today. Sewer is nearby and at some point may be hooked up to it. But Evergreen water has written and said they would be willing to annex this into their water district. They do meet the requirements of R-2 zoning. Designating the 118 acres as lot five, you can only have one home on it. That would be all that would be allowed until someone came in with a major subdivision and re-subdivided and went through the entire process. They would have to have public sewer available at that time.

**BOARD
QUESTIONS**

None.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENTS**

Sharon DeMeester, 415 Chestnut Drive, gave some history of the Two Rivers Plan and its boundaries. The plan was put together by the landowners and it stretches from west of Highway 93 across Highway 2. There were no public meetings, to her knowledge; there was no polling of people who lived in the area; and there were no letters sent out. The plan just appeared and was approved. It scars the process that we know about neighborhood plans. Because it was put together by the landowners they were able to decide what uses they wanted on their piece of land. Looking at the plan there were all kinds of pieces and not really any continuity. Her concern was the groundwater but Wirtala answered her question with having to be hooked up to city sewer. She was also concerned about traffic along the industrial portion, cutting across to Highway 2. If that doesn't get to be a designated road with proper development, such as stop signs, you're pulling out onto a major highway. They really need to address that issue.

Mayre Flowers, Citizens for a Better Flathead, stated she had not had an opportunity to look at these two staff reports in detail or to review the city covenants. She read Policy 21.1 of the Growth Policy where it says, 'provide adequate land area designated for commercial and industrial use to promote affordability, creating entrepreneurialism and/or business relocation to Flathead County'. The intent of the growth policy was to have a more comprehensive look at what needs to be done to provide adequate commercial and industrial lands. There is already a huge surplus of undeveloped commercial and industrial lands in the county. Without a more comprehensive analysis, the staff report does not provide that for the board. She was concerned this falls under more of a spot zoning speculative request and removes potential residential area and replaces it with commercial and industrial. She cautioned the board to look at this more in a comprehensive sense and not as an isolated case.

Terry Peck, 704 Shadow Lane, stated she comes from a ranching family and hated to see it go from agricultural to something different. She didn't want to tell someone else they couldn't do that because it's their property and they should be able to do to with it what they want.

**APPLICANT
REBUTTAL**

Wirtala said the road was a concern for them as well and gave examples of what could be done with that stretch of road that was of concern for everyone.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

Cross spoke about the Riverdale Neighborhood Plan and zoning issues in regards to city services not being available. It's not consistent to be recommending rezoning when required services are not available.

Hagemeier spoke about a different zone change in the same area and said in that case, it was pretty far from required services for the proposed densities. In this situation they are adjacent to sewer. The city of Kalispell and the Evergreen Sewer District said they could have sewer if they upgrade the system. He commented he was not in a position to question somebody's pockets. There is nothing in the growth policy that says money is a factor in the boards' consideration. The reality is if the applicant has deep enough pockets he could have sewer and water.

Lapp read from the Two Rivers Plan stating 'urban services and utilities will be identified by the county and be required to be available at the time of the first phase of development'. Those services have to be available at the first stage of development and not at the time of the zone change request.

**MAIN MOTION
TO ADOPT
F.O.F.
(FPMA 09-03)**

Larsen made a motion seconded by Heim to adopt Staff Report FPMA 09-03 as findings-of-fact.

**BOARD
DISCUSSION**

Heim said there had been a comment about taking away from residential but it seemed logical to him that with a major and a minor arterial as well as a railroad, where else in the valley would you want to have a little more commercial and industrial.

**ROLL CALL TO
ADOPT F.O.F.
(FPMA-09-03)**

On a roll call vote the motion passed unanimously.

**MOTION TO
RECOMMEND
APPROVAL**

Heim made a motion seconded by DeKort to adopt Staff Report FPMA 09-03 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
RECOMMEND
APPROVAL
(FPMA-09-03)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO ADOPT
F.O.F.
(FZC-09-04)**

Larsen made a motion seconded by Toavs to adopt staff report FZC 09-04 as findings-of-fact.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F.
(FZC-09-04)**

On a roll call vote the motion passed unanimously.

**MOTION TO
RECOMMEND
APPROVAL
(FZC-09-04)**

Heim made a motion seconded by Pitman to adopt Staff Report FZC 09-04 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Lapp commented about the transportation plan saying he wanted to encourage everybody to look at the next draft before the meeting on November 12, 2009. Look at the draft and compare it to what Kalispell's plan says. Take some time and see how they match or don't match.

**SUBSIDIARY
MOTION TO
DELETE A
REFERENCE**

Larsen made a motion seconded by Lapp to delete the reference to 76-6-203 MCA on page 13 of the staff report.

**BOARD
DISCUSSION**

Cross asked what the new law was regarding that.

Larsen said it's the same number but different language and the board did not review it under that new language.

ROLL CALL TO

On a roll call vote the motion passed unanimously.

**ROLL CALL TO
RECOMMEND
APPROVAL
(FZC-09-04)**

On a roll call vote the motion passed unanimously.

**INITIATING
NEW
NEIGHBORHOOD
PLANS**

Recent public controversy regarding how to begin a neighborhood planning process in Somers led to joint discussion between the County Commissioners and Planning Board members. The result was direction from the Commission that the Board prepares written procedures to be followed in order to initiate and develop a new neighborhood plan. The board has devoted several public workshops and has drafted "HOW TO START A COUNTY SANCTIONED NEIGHBORHOOD PLAN", dated September 11, 2009 and now seeks public comment. This public hearing is intended to encourage public comment, but is not a statutory requirement. The final document will be forwarded to the County Commission for their consideration and possible action.

**STAFF
OVERVIEW**

Allison Mouch gave a brief overview and brought the board up to date. She handed out a packet of public comments for the board to review and summarized the comments for them.

**PUBLIC
COMMENTS**

Sharon DeMeester, 415 Chestnut Drive, stated she had been involved in this neighborhood plan business; both as developing plans and working on the policy itself. When she saw they had changed the criteria, she had a problem getting her mind around how to decide the area for a neighborhood plan. When talking about a possible petition; she spoke about how it is not reasonable because a lot of people do not put their name on anything. They don't want to commit themselves one way or another. It takes a huge amount of work to get the adequate number of signatures. It's a very long process to develop a neighborhood plan. You've got to have really committed people. If the threshold is too high you won't have enough people to put a plan together. You have to look at percentages for what they were asking. If she had a choice she would go with a direct mailing and then base the percentage on the direct mailing responses. At least you would have those people who are interested responding. So many people are not interested. They aren't interested until somebody comes up to the board members at a meeting for a final vote and they say they didn't hear about it. Even though you've made every effort you can along the way to try to get those people involved.

Joe Ruffolo, 1112 Wisher Lane, is currently the acting president of the Helena Flats Land Use Advisory Committee. They have found that the way the plan works, as outlined in the current policies, works fine. They have not had any problems with people in their area. They normally get 30 to 35 percent who

participate in their meetings. He felt the biggest problem was there was a tremendous amount of misinformation or unclear information as to what a neighborhood plan really was, and what it can and can't do, and people are afraid. That works against the process. This proposed process isn't going to help people understand what a neighborhood plan can and can't do. Maybe the part of the process that needs to be worked on the most is defining what the area should be. He was uncomfortable saying there has to be a threshold because you can't make people be involved. There is no mandated threshold for who has to participate in the process. He was a little uncomfortable saying if you don't get at least 30% of the people or 50% of the people on the petition, you can't even start to organize or try to move anything forward. Neighborhood Plans are an educational process. He commented he knew what everyone was trying to do here was solve this so there won't be a repeat of Evergreen and Somers; he didn't feel this would really help that problem. This might throw some roadblocks in the process. We want to encourage more people to get involved. If they were going to do something like this and they thought it would help, he gave some thresholds that other areas use.

Paul McKenzie, Stoltze Lumber, stated they had been involved in quite a few neighborhood plans and they are very time consuming processes. To him, it did seem to make sense to have some assurance that you do have some buy-in from the landowners within the proposed area. He didn't see anything particularly new in what was being proposed. He thought an 11 step process was a little too onerous and could maybe be whittled down to a three or four step process. It does take a lot of time and our planning resources are limited. Asking for some indication of significant landowner interest prior to dedicating planning staff to a public process is reasonable. They were in general support of what was being proposed. There is some minor tweaking that could be done to make it a little more user friendly and easier to understand.

Mayre Flowers, Citizens for a Better Flathead, spoke of an earlier workshop and the board having heard from 9 of the 13 people representatives who had worked on neighborhood plans for years. What they heard from those individuals was the process was working and was not broken. She understood the intent behind trying to provide some clarity, but she thought a 10% threshold was not necessary. You will have that as they move into the plan but she felt it was very hard, particularly given the

political environment in the Flathead, to get people to put their name on anything. To allow the process to move forward for discussions, you have to trust planning staff and they can make the judgment to move forward and bring reports back to the planning board. She spoke of the current process and the very high threshold towards the end of the process. She thought to burden this more at the beginning is unnecessary. The other real issue was they hadn't defined landowner for signature purposes. As it was currently worded they were excluding non-landowners. She encouraged the board to simplify the document and not have the 10% threshold. Have a check where planning staff periodically had benchmarks where they document the validity of investing additional staff resources.

Joe Ruffolo, 1112 Wisher Lane, added that the last two sentences in Section four are a little bit different than the last two sentences in Section ten. He thought the board would want those to be consistent. As they read they are not completely clear.

**MOTION TO
ADOPT NEW NP
PROCESS**

Toavs made a motion seconded by Pitman to adopt the 'Initiating New Neighborhood Plans' process.

**BOARD
DISCUSSION**

Lapp asked the board if they felt it was their directive from the commissioners to come up with something.

The board members all agreed they felt they were asked to come up with some kind of step process.

Lapp commented that he agreed with Mayre Flowers. He read through the growth policy again and remembered when they wrote it they took a lot of time to go through that section to try to get it done. He thought it was lined out in there.

DeKort commented the process they were speaking of was for initiating new neighborhood plans but what they were going beyond that even as far as the final vote. He stated he had a problem with property owners not being defined. In looking through the growth policy on the section regarding governing bodies initiating amendments, 'amendments shall be subject to standard public review procedures including public notice of hearing in the newspaper of record, preparation of findings-of-fact, planning board hearing and recommendation and decision by the governing body. Findings-of-fact shall be based on

criteria for growth policy amendments found later in the chapter'. On the next page there is a list of growth policy procedures. He assumed you should follow those procedures.

Cross said at this stage they were advised by the county attorney that he felt this would be an administrative process the commissioners could adopt by resolution and then direct the county planning staff to follow it. He thought it was generally consistent with the growth policy. He was to get a letter to the board to that effect but he wasn't sure they had that letter.

Larsen thought he would send the letter to the commissioners once the planning board had something to adopt.

Cross said the process would be that once the board had something to adopt, the county attorney would write a letter weighing in whether or not he felt it was consistent with the growth policy. If it was consistent it would not require an amendment to the growth policy it would just be an administrative policy.

Lapp agreed with DeKort. If the board adopts this it has to be consistent with the growth policy.

Pitman said the proposal does follow the growth policy and when they looked at it there seemed to be a gap what to do before you get to those steps in chapter 10. They tried to fill that gap. If planning staff can come up with an alternative to the 10% with some type of measures he would be willing to entertain that. So far, he hadn't seen anything from the planning staff.

Mouch said she thought the 10% was sort of a reasonable number.

Pitman asked if there were some other way you could measure the success of the plan to be able to move forward.

Mouch said the 10% with the petition and signing off on the statement they acknowledge there would be another percentage they have to meet later on. She thought that was the hurdle most people had the problem with. She didn't think step #10, where a certain percentage is required to indicate general majority support of respondents, was a problem. At that point there is a draft plan, a product in front of the community. People

have something to weigh in on. She didn't want to suggest an alternative for the 10%; she would argue that the response rate of 30% with 60% approval before it comes before the planning board is where the check and balance occurs.

Pitman said when they spoke with the commissioners; they wanted to have something to ensure they should move forward at that point. They need something.

Heim said the issue was determining what a clear majority meant. When should you start spending county money?

Larsen said if you can't get 10% to start the process you shouldn't be starting it.

Pitman said he wasn't arguing, he just wondered if there was something better.

Toavs said that half the people that made comments on this were saying there needed to be 30% before the county could get involved is not right. That isn't what the board is asking.

Larsen stated that DeKort had a valid point. The growth policy says clear majority, the board was just trying to clarify what clear majority was. We went beyond initiating we're kind of redefining what a clear majority was. If the board doesn't amend the growth policy, he wondered how they have both the growth policy and this document out there.

DeKort commented that in the policy it states the clear majority is both landowners and acreage. There isn't any acreage in here.

Larsen commented that bothers him. He liked the document when they started but they went beyond that.

Cross said his recollection was is they had a clear majority then they may develop a plan. The question is at what point is a plan being developed. Clearly it's when there is just education going on. There was some contention it really didn't happen until after the boundaries were established. After the board discussed the issue they thought they couldn't ask someone to be in support of a plan that doesn't even begin to exist yet. The board determined that they would draw the line for developing a plan at the point it comes before the board, when it still could get changed or modified through a series of public hearings.

Pitman said the problem he felt the public thought if they follow the policy by the strict way they would never get a plan. Changing it is necessary or they would never get a clear majority at that stage.

Cross felt the attorney's office would find it to be consistent with the growth policy. He thought the language was so vague about a clear majority in developing a plan, and it doesn't relate to the steps that are in there. There is a real disconnect between the two. Right now the system does not work. If someone wanted to develop a neighborhood plan in the county today, the planning office would have to tell them they were sorry but they didn't know what to do. Right now the process doesn't exist. Until something does get approved in terms of an administrative process there are no neighborhood plans being started. This will establish a process for the expenditure of public funds. If you can't get to your 10% there is nothing saying you can't continue to meet, you just won't have any county staff or be able to utilize a public resource until you can get to that. He felt this was reasonable and protecting the minority which is those people that feel they are being forced into a plan. He felt they had struck a really good balance and it was time to send it to the commissioners for review.

Larsen said he liked this and felt it was a good balance but he wanted to be convinced. If you take 60% of 30% is 18%; convince him that is a clear majority. He thought they did a pretty good job on this but would probably vote no because of that.

Cross spoke about when a plan would come before the planning board and the onus would be on the steering committee to demonstrate they had ample public support. Not only to the planning board but to the commissioners. You always have that ability for people to opt out of the plan.

The board discussed defining landowners and whether they should amend the growth policy. They also discussed amending several of the items in the document to make it consistent with the growth policy.

**SECONDARY
MOTION TO
(AMND #4)**

Pitman made a motion seconded by DeKort to amend #4 so the last sentence reads: *I also understand that the proposed plan must be supported by a clear majority of both landowners and acreage within the established plan boundaries before being*

	<i>submitted to the Flathead County Planning Board.</i>
BOARD DISCUSSION	None.
ROLL CALL (AMND #4)	On a roll call vote the motion passed unanimously.
SECONDARY MOTION TO (AMND #10)	Pitman made a motion seconded by Heim to amend #10 to read: <i>At the end of Step 4 of the process described in Chapter 10, the plan must demonstrate support from a clear majority of both landowners and acreage within the established plan boundaries before it can be presented to the Planning Board and Commissioners for adoption.</i>
BOARD DISCUSSION	None.
ROLL CALL (AMND #10)	On a roll call vote the motion passed unanimously.
BOARD DISCUSSION	The board discussed defining landowners.
SECONDARY MOTION TO (AMND #5)	Cross made a motion seconded by Larsen to amend #5 and add a footnote that reads: <i>Each taxable parcel shall be entitled to one signature regardless of number of owners.</i>
BOARD DISCUSSION	None.
ROLL CALL (AMND #5)	On a roll call vote the motion passed unanimously.
ROLL CALL TO ADOPT NEW NP AS AMENDED	On a roll call vote the motion passed 6-1 with Lapp dissenting.
COMMITTEE REPORTS	None.
OLD BUSINESS	None.
NEW BUSINESS	The board discussed scheduling a quarterly meeting with the commissioners. They would like to see if possibly October 28 th would work.

Grieve wanted to let the board know about the L-T-R (Large Rural Tract) zoning open house at 6:30, Monday October 19th.

ADJOURNMENT The meeting was adjourned at approximately 11:00 pm. on a motion by Pitman. The next meeting will be held at 6:00 p.m. on October 21, 2009.

Gordon Cross, President

Mary Sevier, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 1/13/10